



Town of Kittery

200 Rogers Road, Kittery, ME 03904

Board of Appeals
Meeting Agenda, Council Chambers
Tuesday, October 13, 2015
Regular Meeting - 7:00 P.M.

1. Call to Order; Introductory; Roll Call
2. Pledge of Allegiance
3. Agenda Amendment and Adoption
4. Executive session, if required
5. Public Hearings

6. Unfinished Business
 - a. Town Code Title 14 Proposal Update
7. New Business
 - a. Appeal/Request Application Forms - Final – Approval
 - b. Board Frequently Asked Questions – Final - Approval
8. Acceptance of Previous Minutes: August 25, 2015
9. Board Member or CEO Issues or Comment
10. Adjournment

WORKSHOP FOLLOWING MEETING

Recent Council approved Title 16 amendments

TOWN OF KITTERY, MAINE
BOARD OF APPEALS

Members present: Brett Costa, Craig Wilson, Gary Beers, Jeffery Brake

Members absent: Niles Pinkham, Brian Boyle

Staff: Robert Marchi, Code Enforcement Officer

Chairman Costa called the meeting to order at 7:05 p.m.

1. Call to Order, Introductory, Roll Call

2. Pledge of Allegiance

3. Agenda Amendment and Adoption

The Chairman adopted the agenda as presented.

4. Executive session - NONE

5. Public Hearings - NONE

6. Unfinished Business – NONE

7. New Business – NONE

8. Acceptance of Previous Minutes:

The minutes of August 11, 2015 were accepted as presented.

9. Board Member or CEO Issues or Comment

Mr. Beers suggested if there was no formal business, appeals, or requests for the Board to deal with on a given meeting night, a formal agenda and meeting should not be conducted. The meeting would simply be announced as a workshop. The Board concurred.

10. Adjournment

Mr. Beers moved to adjourn. Seconded by Mr. Wilson. Motion carried unanimously.

The Board of Appeals meeting of August 25, 2015 adjourned at 7:12 p.m.



TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904

Telephone: 207-475-1329 Fax: 207-439-6806

REPORT TO TOWN COUNCIL

Meeting Date: September 14, 2015
From: Ann Grinnell, Planning Board Chair & Chris Di Matteo, Town Planner
Subject: Town Code amendments to Title 16, Land Use & Development Code
Councilor Sponsor: Jeffrey Thomson, Chair

EXECUTIVE SUMMARY

The following sections of Title 16 require code amendments in order to provide greater clarity, remove outdated references and update provisions to allow for more conformance with the Town's Comprehensive Plan:

ITEM 1

- **16.7.8 Land Not Suitable for Development** {Proposed as "Net Residential Acreage"}. The amendment provides similar language used by other communities to calculate the net land area when determining the total number of dwelling units allowed in a subdivision. The amendment also provides a new and revised soil definition that includes a new reference to replace the circa 1975 *Soil Suitability Guide For Land Use Planning In Maine*.
- **16.2.2 Definitions:** Amendment includes amended definitions for *Soils* and *Net residential acreage*, and new definitions for:
 - Filled tidal lands.
 - Cemetery and burying ground.
 - Minimum land areas per dwelling unit.
- **16.3 Land Use Zone Regulations.** Incorporates a reference to the proposed new definition for *Minimum land areas per dwelling unit*
- **16.8.11.5 Application Procedures** {Cluster Development}. Change required due to the *Soil Suitability Guide* reference in 16.7.8. The reference is deleted and a new reference is made to the proposed *Net Residential Acreage* provision.

Joint Board/Council workshop held: 9/8, 10/6, 11/10/2014, & 5/4/2015

ITEM 2

16.8.7 Sewage Disposal. Changes provide clarity by re-organizing the article to reflect three distinct disposal systems: sewer and subsurface wastewater disposal. As with item 1 above, the reference to the *Soil Suitability Guide* has been removed. In addition, there is an increase in the required soil depth for disposal systems and new pretreatment requirements for developments impacting sand and gravel aquifers.

Joint Board/Council workshop held: 9/8, 10/6, 11/10/2014, & 5/4/2015

ITEM 3

16.8.16.3 Lots. Moving lot size restrictions from 16.9.1.4 Soil Suitability to this section was proposed last year. In response to subsequent comments and in light of the proposed definition of minimum land area per dwelling unit, which includes similar restrictions, staff now recommends deleting the original 16.9.1.4 lot restrictions

entirely. Remaining changes to this section clarify the prohibition of 'flag lots' under "Lot Shape" and reorganize items by priority.

Joint Board/Council workshop held: 9/8, 10/6, 11/10/2014, & 5/4/2015

ITEM 4

16.9.1.4 Soil Suitability. In addition to deleting the outdated soil guide the amendment codifies current practices for soil assessment and soil mapping and reports.

Joint Board/Council workshop held: 9/8, 10/6, 11/10/2014, & 5/4/2015

ITEM 5

16.4.4.1 Inspection of Required Improvements. This provision has been modified to reflect the current practice with regard to inspections of Planning Board approved plans and adds the opportunity for extending such services to smaller, non-board approved plans if necessary.

16.10.3.7 Independent Review/Inspection Review. In addition to changing the title of the provision to *Independent Peer Review* the language has been modified to reflect only the consultation and the procedures for establishing funds from the applicant when consultants are required.

16.10.3.8 Independent Review Applicant Funding. This section is deleted and moved to 16.10.3.7 with modifications.

16.10.8.2.2 Performance Guaranty Conditions. Along with minor clarifications, the proposed amendment adds a provision for retaining ten percent of the guaranty to ensure satisfactory completion on items that often require an establishment period such as vegetated swales, plantings and lawn areas.

16.10.9.1.1 Approved Final Subdivision Plan. The expectation that a pre-construction meeting is held prior to any clearing or earthwork is added to this section of the code.

These amendments were not included in a joint Board/Council workshop.

ITEM 6

16.7.3.5.6 Nonconforming Structure Reconstruction. This provision is proposed to be added to correct what appears to be an unintentional omission in 2010 town amendments/recodification. The code allows for the opportunity to replace a nonconforming structure outside the shoreland zone in-place at its original location. This amendment was not included in a joint Board/Council workshop.

ITEM 7

16.5.2.4 Permit Period. The proposed amendment clarifies the intent to provide an applicant to a building permit the opportunity for a one-time renewal without having to re-pay all the associated fees, only the base application fee. This amendment was not included in a joint Board/Council workshop, however, was discussed at Town Council 4/27 and 5/11/2015 meetings.

ITEM 8

16.9.1.3 Prevention of Erosion. Modifications to this portion of the Code are required to reflect the expectations from Maine DEP for contractors working within the shoreland zone involving erosion and sedimentation control. The Planning Board concurs with staff's recommendation that the provision is applicable town wide. This amendment was not included in a joint Board/Council workshop.

- **16.2.2 Definitions.** Amendment includes and new definitions for:
 - Contractor, excavation.

STATEMENT OF NEED

The Town Council adoption of the subject amendments listed above is required for greater clarity, and updated references and definitions, and up-to-date provisions that allows for more consistency when applying the code, and provides for greater conformance to the Town's Comprehensive Plan

BACKGROUND

The proposed amendments have received review by the Planning Board and the Town Manager's Proposal Review Group. Required public hearings have been properly noticed and held, and four joint workshops with the Council and the Board were held on September 8 and October 6, November 10, 2014 and May 4, 2015 that included items 1 through 4.

FACTS BEARING ON THE EQUATION

- Removing references in Title 16 of the outdated *Soil Suitability Guide For Land Use Planning In Maine* (Item#1) and replacing it with the current practice for assessing soils for development, along with all the other amendments that allow for better clarity, is critical for an equitable application of the Land Use Development Code.
- The Code currently provides no clear method to replace a nonconforming structure outside of the shoreland zone as it did prior to 2010 (Item#6).
- Amendments that offer new provisions are intended to provide up-to-date land use regulations and greater conformance to the Town's Comprehensive Plan.

CURRENT SITUATION

The question to adopt proposed amendments to the Town Code, Title 16 comes before the Council.

PROPOSED SOLUTION/RECOMMENDATION

Schedule a public hearing to be held on September 28, 2015.

RATIONALE FOR THE PROPOSED SOLUTION (INCLUDING COSTS)

There is no budgetary cost to the Town of Kittery with regard to these amendments

Town of Kittery Ordinance Revision Memorandum

Originator(s): A. Grinnell, Planning Board Chair;	Council Sponsor(s): J. Thomson, Chair
Council meeting date: September 14, 2015 Joint Workshop Meeting: 9/8, 10/6, 11/10/2014, & 5/4/2015	Title: Land Not Suitable for Development (Current) Net Residential Acreage (Proposed)
Town code section: Title 16, §16.7.8	History: new proposal

ENCLOSURE: CODE AMENDMENT (PG. 2)

- 1
- 2 **PURPOSE OF PROPOSAL:**
- 3
- 4 This proposal would amend the Town Code, Title 16 which in its present form does not permit the
- 5 Planning Board to approve most subdivision development where septic systems are required.
- 6
- 7 **SUMMARY OF PROPOSAL/AMENDMENT:**
- 8
- 9 The proposal would repeal the statutory reliance upon an outdated reference known as *The Soil*
- 10 *Suitability Guide for Land Use Planning in the State of Maine* and would substitute standards that are
- 11 consistent with the Comprehensive Plan and best practices (Lines 52-53 & 130-133).
- 12
- 13 It would amend the calculation of Net Residential Acreage and Net Residential Density (Lines 160-169),
- 14 which is currently based on Land Not Suitable for Development (Lines 43-53) and used when
- 15 establishing the number of dwelling units allowed in a subdivision.
- 16
- 17 To arrive at Net Residential Acreage, the amendment would require subtracting the sum of all portions of
- 18 land wherein dwelling units cannot possibly be built due to wetlands, easements, burying grounds,
- 19 rights-of-way, etc., or where there are substantial constraints to development (Lines 68-95). In the case
- 20 of somewhat poorly drained soils partial credit is granted, adding to the buildable net acreage (Lines 90-
- 21 91). In no case are there instances of double subtraction where different types of land area overlap
- 22 (Lines 68-69).
- 23
- 24 **JUSTIFICATION:**
- 25
- 26 Absent this amendment, few new subdivision developments are likely to be approved by the Planning
- 27 Board because most of the Town's soils are rated as *very poor* and/or *poor* by the outdated Soil
- 28 Suitability Guide. The amendment would correct this serious problem.
- 29
- 30 The current ordinance prohibits septic systems on soils identified as "poor or very poor". The outdated
- 31 reference classifies most land in Kittery as "poor or very poor". The amendment is necessary before
- 32 most subdivisions requiring septic systems may go forward.
- 33
- 34 This amendment would implement the Comprehensive Plan's requirement to manage density, to protect
- 35 natural resources and features and to preserve property values. It would be fair to developers and does
- 36 not burden small land owners because non-subdivision projects would be subject to fewer deductions
- 37 under the calculation for 'minimum land area per dwelling unit'.
- 38
- 39 **FISCAL IMPACT:**
- 40 None.
- 41

PROPOSED AMENDMENT

Article VIII. Land Not Suitable for Development

~~16.7.8.1 Locations and Sewage.~~

~~The Planning Board may not approve portions of any proposed development that:~~

- ~~1. Are situated below sea level;~~
- ~~2. Are located within the one hundred (100) year frequency floodplain as found in the definition;~~
- ~~3. Are located on land which must be filled or drained, or on land created by diverting a watercourse, except the Planning Board may grant approval if central sewage collection and disposal system is provided.~~
- ~~4. Has any part of the development located on filled tidal wetlands.~~
- ~~5. Employs septic sewage disposal and is located on soils rated poor or very poor by the Soil Suitability Guide for Land Use Planning in the State of Maine.~~

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS

Article VIII. Net Residential Acreage

16.7.8.1 Purpose

To determine for regulatory purposes the land area suitable for dwelling units. This land area, the *net residential acreage*, is used to determine the maximum number of dwelling units allowed on a parcel that is subject to subdivision. The total number of dwelling units allowed is equal to the *net residential acreage* divided by the *minimum land area per dwelling unit* for a given land use zone.

16.7.8.2 Net Residential Acreage Calculation

To calculate net residential acreage the land area listed below must be subtracted from a parcel's gross area. Where land areas to be subtracted overlap, the area therein is subtracted once.

- A. All land located below the Highest Annual Tide elevation as published in the *Maine DEP Highest Annual Tide (HAT) levels* for the most current year.
- B. All land located within the floodplain as defined in Title 16.2, *Flood, One Hundred (100) Year*.
- C. All wetlands as defined in Title 16.2 *Wetland*, as well as vernal pools, ponds, lakes, streams and other water bodies, including fifty (50) percent of the associated setbacks described in *Other Buildings and Structures*, Table 16.9, Chapter 9 in this Title.
- D. All land located on filled tidal lands, per Title 16.2 *Tidal Land, Filled*.
- E. All land located within existing rights-of-way and other existing easements wherein dwelling units cannot be built.
- F. All land located within proposed rights-of-way including parking and travel ways. Driveways are excluded.
- G. All land isolated from the principal location for development on the parcel by a road/street, existing land uses, or any physical feature, natural or manmade, such that it creates a barrier to the central development of the site and no means of access is proposed nor likely to be provided in the future. However, to demonstrate that identified isolated land may be considered developable for the purpose of this calculation, the applicant must submit a plan and supporting documentation for the Board's consideration.
- H. All land zoned commercial (C-1, C-2, or C-3).
- I. All land one (1) acre or more contiguous area with sustained slopes of 20% or greater.
- J. All land identified as exposed bedrock, and soils with a drainage class of *poorly drained*, and/or *very poorly drained* as defined in Title 16.2 *Soils*.
- K. Fifty (50) percent of all land characterized as drainage class of *somewhat poorly drained*, unless public sewer is used, in which case no land area is subtracted.

- L. All land area within a cemetery and burying ground as defined in Title 16.2, including associated setback per MRSA Title 13 §1371-A Limitations on construction and excavation near burial sites.
- M. All land within a Commercial Fisheries/Maritime Uses Overlay Zone or Resource Protection Overlay Zone not included in 16.7.8.2.A-L.

16.7.8.3 Documentation

The Net Residential Acreage calculation must be supported by verifiable information and accurate data and be shown on the subdivision plan or other plan when applicable.

16.7.8.4 Exemptions to Net Residential Acreage Calculations

- A. The maximum number of dwelling units for residential development not subject to subdivision is based on minimum land area per dwelling unit defined in Chapter 2 Definitions of this Title.
- B. The creation of dwelling units subject to subdivision within existing buildings that are connected to town sewer and are located in the Mixed Use -Kittery Foreside; Mixed Use-Badgers Island; Residential Village; Business Local; or Business Local -1 zones are exempt from the net residential acreage calculations in 16.7.8.1. Total number of dwelling units permitted is determined by dividing the gross lot area by the minimum land area per dwelling unit allowed in the zone. The exemption is allowed in the above base zones when subject to the Shoreland Overlay Zone.

Chapter 16.2 DEFINITIONS

16.2.2 Definitions

Acre means a unit of area equal to 43,560 square feet (about 4047 square meters)

Acreage means land area measured in acres.

Tidal Land, Filled means portions of the submerged and intertidal lands that have been rendered by human activity to be no longer subject to tidal action or below the natural low-water mark after October 1, 1975.

Soils.

~~1. "Poorly drained soils" means soils where water is removed so slowly that the water table is at or within twelve (12) inches of the ground surface for six to nine months of the year.~~

~~2. "Very poorly drained soils" means soils in an area where water is removed so slowly that the water table is at or within twelve (12) inches of the ground surface for nine to ten (10) months of the year.~~

A soil's drainage class must be determined by a Maine Certified Soil Scientist and based on the most recent Natural Resources Conservation Service Supplemental Key for the Identification of Soil Drainage Class that reflects the Maine Association of Professional Soil Scientists, Key to Drainage Classes. The Key includes among other terms the following:

Very Poorly Drained. Water is removed from the soil so slowly that the water table remains at or above the surface most of the year. A seasonal high water table is at or above the surface from at least October through July and sometimes throughout the year. In August and September the water table may recede below twelve inches. The high water table severely limits the use of these soils for most agricultural, forestry, and urban activities. These soils are hydric and typically support a wetland plant community.

Poorly Drained. Water is removed from the soil so slowly that the soil remains wet most of the year. A seasonal high water table is at or near the surface from October through June. In July, August and September it may recede below sixteen inches. The seasonal high water table limits the use of these soils for most agricultural, forestry, and urban activities. These soils are hydric and typically support a wetland plant community.

Somewhat Poorly Drained. Water is removed from the soil slowly enough to keep it wet for significant periods of time, but not the entire year. A seasonal high water table is at seven inches to sixteen inches in depth from October through May and sometimes June. From July to October it may recede below thirty inches in depth. A seasonal water table limits the use of these soils for some agricultural, forestry and urban activities. These soils are not hydric in Maine, and are commonly found in the transitional landscape positions between wetland and upland soils.

Cemetery and Burying Ground: A private or public place set apart for the interment of the dead. In the absence of an apparent boundary, i.e., fence, stone wall, survey markers, survey plan, or information from the Kittery Historical and Naval Society or other reliable historic sources, the perimeter of the interment area is determined by starting with a 10-foot distance from existing tombstones and expanded, where necessary, to form a final rectilinear area.

Net residential acreage means the land area subject to subdivision that is identified for regulatory purposes as developable and is means the gross available acreage less minus the area required for streets or access and less the areas of any portions of the site which are unsuitable for development land area identified as outlined in Article VIII of Chapter 16.7 *Net Residential Acreage*, unless otherwise exempt in 16.7.8.4 *Exemptions to Net Residential Acreage Calculation*.

Net residential density means the number of dwelling units in a subdivision per net residential acre. This is calculated by dividing the net residential acreage by the square feet specified as *minimum land area per dwelling unit* in the dimensional standards in Title 16.3.2 for the relevant base zone or overlay zone(s) where applicable.

Minimum land area per dwelling unit.

Minimum land area referenced in *Chapter 3, Article II Zoning Definitions, Uses, Standards* of this Title means the gross area of a parcel not subject to subdivision regulations minus the land area listed below. Where land areas to be subtracted overlap, the area therein shall be subtracted once. For land area subject to subdivision see 'Net Residential Acreage'.

- A. All land located below the Highest Annual Tide elevation as published in the Maine DEP Highest Annual Tide (HAT) levels for the most current year.
- B. All wetlands as defined in Title 16.2 *Wetland*, as well as vernal pools, ponds, streams and other water bodies.
- C. All land located on filled tidal lands, per Title 16.2 *Tidal Land, Filled*.
- D. All land located within existing rights-of-way and other existing easements wherein dwelling units cannot be built.

Chapter 16.3 LAND USE ZONE REGULATIONS

Article III. Zone Definitions, Uses, Standards

16.3.2.1 Residential – Rural R-RL.

D. Standards

2. Dimensional Standards:

Minimum land area per dwelling unit 40,000 square feet*

*As per Chapter 16.2 definition of ~~net residential density~~ *minimum land area per dwelling unit* except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment October 25, 2012. ~~(Ordained 9/24/12; effective 10/25/12)~~

3. Subdivision types and standards. (Ordained 9/24/12; effective 10/25/12)

Subject to Net residential acreage and Net residential density per 16.2.2.

a. Cluster residential development. In a cluster residential development, the above standards may be modified in accordance with special provisions of Article XI of Chapter 16.8, including that there is no minimum ~~lot size~~ land area requirement per dwelling unit, and with the conditions that:

- i. Minimum principal building separation as required by the Fire Chief, but not less than 20 feet.
- b. Subdivision development (Per Special Exception Uses 16.3.2.1.C.14). In a subdivision development, standards 16.3.2.1.D.1 and 2 apply and include:
 - i. Minimum percentage of Common Open Space 15%.

**16.3.2.2 Residential – Suburban R-S.
D. Standards**

2. Dimensional Standards:

Minimum land area per dwelling unit*
without public sewage disposal
with public sewage disposal

40,000 square feet
30,000 square feet
unless reduced in accordance
with Note A.

*As per Chapter 16.2 definition of ~~net residential density~~ minimum land area per dwelling unit except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment October 25, 2012. ~~(Ordained 9/24/12; effective 10/25/12)~~

3. Subdivision types and standards. (Ordained 9/24/12; effective 10/25/12)

Subject to Net residential acreage and Net residential density per 16.2.2.

a. Cluster residential development. In a cluster residential development, the above standards may be modified in accordance with special provisions of Article XI of Chapter 16.8, including that there is no minimum ~~lot size~~ land area requirement per dwelling unit, and with the conditions that:

- i. Minimum principal building separation as required by the Fire Chief, but not less than 15 feet.
- b. Subdivision development (Per Special Exception Uses 16.3.2.2.C.10). In a subdivision development, standards 16.3.2.2.D.1 and 2 apply and include:
 - i. Minimum percentage of Common Open Space 15%.

4. Mobile homes. Mobile homes must meet the standards of Article XI and XIII of Chapter 16.8.

**16.3.2.3 Residential - Kittery Point Village R-KPV.
D. Standards**

2. Dimensional Standards:

Minimum land area per dwelling unit

40,000 square feet*

*As per Chapter 16.2 definition of ~~net residential density~~ minimum land area per dwelling unit except to

exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment October 25, 2012. ~~(Ordained 9/24/12; effective 10/25/12)~~

3. Subdivision types and standards. (Ordained 9/24/12; effective 10/25/12)

Subject to Net residential acreage and Net residential density per 16.2.2.

a. Cluster residential development. In a cluster residential development, the above standards may be modified in accordance with special provisions of Article XI of Chapter 16.8, including that there is no minimum lot size land area requirement per dwelling unit, and with the conditions that:

i. Minimum principal building separation as required by the Fire Chief, but not less than 15 feet.

b. Subdivision development (Special Exception Uses 16.3.2.3.C.9). In a subdivision development, standards 16.3.2.3.D.1 and 2 apply and include:

i. Minimum percentage of Common Open Space 15%.

16.3.2.4 Residential – Urban R-U. D. Standards

2. Dimensional Standards:

Minimum land area per dwelling unit 20,000 square feet*

*As per Chapter 16.2 definition of ~~net residential density~~ minimum land area per dwelling unit except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment October 25, 2012. ~~(Ordained 9/24/12; effective 10/25/12)~~

3. Subdivision types and standards. (Ordained 9/24/12; effective 10/25/12)

Subject to Net residential acreage and Net residential density per 16.2.2.

a. Cluster residential development. In a cluster residential development, the above standards may be modified in accordance with special provisions of Article XI of Chapter 16.8, including that there is no minimum lot size land area requirement per dwelling unit, and with the conditions that:

i. Minimum principal building separation as required by the Fire Chief, but not less than 15 feet.

b. Subdivision development (Special Exception Uses 16.3.2.4.C.10). In a subdivision development, standards 16.3.2.4.D.1 and 2 apply and include:

i. Minimum percentage of Common Open Space 15%.

16.3.2.5 Residential - Village R-V. D. Standards

2. The following space standards apply:

Minimum land area per dwelling unit 4,000 square feet*

*As per Chapter 16.2 definition of ~~net residential density~~ minimum land area per dwelling unit except to exempt properties which are unable to meet the square feet required for a single family dwelling unit,

provided the lot was conforming prior to the date of this enactment October 25, 2012. ~~(Ordained 9/24/12; effective 10/25/12)~~

16.3.2.6 Residential- Rural Conservation R-RC

D. Standards

2. The following dimensional standards apply:

Minimum land area per dwelling unit 80,000 square feet*

*As per Chapter 16.2 definition of minimum land area per dwelling unit except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to October 25, 2012.

3. Subdivision types and standards. (Ordained 9/24/12; effective 10/25/12)

Subject to Net residential acreage and Net residential density per 16.2.2.

a. Cluster residential development. In a cluster residential development, the above standards may be modified in accordance with special provisions of Article XI of Chapter 16.8, including that there is no minimum lot size ~~land area requirement per dwelling unit~~, and with the conditions that:

i. Minimum principal building separation as required by the Fire Chief, but not less than 20 feet.

b. Subdivision development (Special Exception Uses 16.3.2.6.C.8). In a subdivision development, the standards 16.3.2.6.D.1 and 2 apply and include:

i. Minimum percentage of Common Open Space 15%.

16.3.2.10 Business – Park B-P.

D. Standards.

3. Cluster Residential Development. In a cluster residential development, the above standards may be modified in accordance with the special provisions of Article XI of Chapter 16.8, including that there is no minimum lot size ~~land area requirement per dwelling unit~~, and with the conditions that:

i. Minimum Principal building separation as required by the Fire Chief, but not less than 10 feet.

Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT

16.8.11.5 Application Procedure.

All development reviewed under this Article is subject to the application procedures in Chapter 16.10, Development Plan Application and Review, and the following:

A. In addition to the requirements of Chapter 16.10, the following are required at submittal of the Sketch Plan:

1. Calculations and maps to illustrate:

a. proposed dimensional modifications and the dimensional standards required in the zone in which the development will be located;

b. ~~non-buildable area (land not suitable for development as defined in Article VIII of Chapter 16.7~~ All land area identified in Title 16.7.8 Net Residential Acreage; and

354 c. ~~net residential acreage and~~ Net Residential Density; and
355 d. open space as defined in Section 16.8.11.6.D.2 of this Article.
356
357

Town of Kittery Ordinance Revision Memorandum

Originator(s): A. Grinnell, Planning Board Chair;	Council Sponsor(s): J. Thomson, Chair
Council meeting date: September 14, 2015 Joint Workshop Meeting: 9/8, 10/6, 11/10/2014, & 5/4/2015	Title: Sewage Disposal (Sewer only)
Town code section: Title 16, §16.8.7.1	History: Amendment

ENCLOSURES: CODE AMENDMENT (PG. 4)

PURPOSE OF PROPOSAL:

The proposal would amend 16.8.7.1, currently titled Sanitary Sewer and Septic Disposal to comply with Kittery Town Charter Section 2.14. The charter requires that there be only one topic per ordinance. Items related to sewer would be consolidated in 16.8.7.1. Subsurface wastewater disposal regulations would become 16.8.7.2. (See separate memorandum)

Revisions align Town Code Title 16 with Title 13 (Public Services/Sewer) and clarify the waiver process.

SUMMARY OF PROPOSAL/AMENDMENT:

Section 16.8.7.1.A (line 106) would define sewer hook-up requirements for individual structures, as well as for subdivisions, in order to clarify and codify what is current practice.

Section 16.8.7.1.E (line 127) would permit a developer to request a waiver from the mandatory sewer hook-up requirement should conditions make it infeasible to do. Guidelines for the request and for the Board's deliberations are described. The intent is not to circumvent the requirements in Title 13.1 of the Town Code.

JUSTIFICATION:

- These amendments would make sewer hook-up guidelines clearer and easier to find for both developers and owners of single structures with sanitary facilities.
- Rules governing sewer hook-ups for individual structures would be added to Title 16. The additions would align with and refer readers to Title 13 requirements.
- Clarifying the process by which a developer may request a waiver from the requirement to hook-up to the Town sewer system would ensure that all requests are treated equitably.

FISCAL IMPACT: None

Town of Kittery

Ordinance Revision Memorandum

Originator(s): A. Grinnell, Planning Board Chair;	Council Sponsor(s): J. Thomson, Chair
Council meeting date: September 14, 2015 Joint Workshop Meeting: 9/8, 10/6, 11/10/2014, & 5/4/2015	Title: Sewage Disposal <u>(Subsurface wastewater disposal only)</u>
Town code section: Title 16, §16.8.7.2 and to Title 16.2.2 Definitions	History: Amendment

ENCLOSURES: CODE AMENDMENT (PG. 5)

PURPOSE OF PROPOSAL:

MRS 30-A §4352 requires that "a zoning ordinance must be pursuant to and consistent with a comprehensive plan." This proposal contains amendments that would implement Kittery's Comprehensive Plan in many significant ways.

It would also eliminate a reference to an outdated soil manual that restricts the siting of subsurface wastewater disposal (SWD) systems in a manner that does not reflect modern soil science or best practices.

The proposal would bring this section into compliance with Town Charter section 2.14, which requires a single topic per ordinance.

SUMMARY OF PROPOSAL/AMENDMENT:

Section 16.8.7.1.B.1 (lines 171-172) corrects a conflict with stated 100-foot setback and the setbacks contained in Table 16.9 *Minimum Setbacks from Wetlands and Water Bodies* for Subsurface Sewage Disposal

Section 16.8.7.1.C (lines 145-146) would be deleted. This subsection limits septic use based on the outdated *Soil Suitability Guide*.

Section 16.8.7.2.D.1 (line 207) would permit current soil-depth requirements to be followed where a replacement SWD system, with the same capacity as the original, cannot meet the newer standards.

Section 16.8.7.2.D.3 (line 216) would increase the depth of soil required for passing test pits by six (6) inches, instead of mandating prohibitively-expensive advanced pretreatment for all new SWD systems.

Section 16.8.7.2.E (line 224) would require advanced pretreatment in new construction that is within 100 ft. of porous sand-and-gravel aquifers. There are only two small sand-and-gravel aquifers in Kittery, both are in the vicinity of Cutts Ridge.

Title 16.2.2 Definitions: New definitions for the following, relative to sewage disposal:

- Septic System
- Subsurface wastewater disposal system
- Wastewater
- Wastewater, domestic

72
73 JUSTIFICATION:
74

- 75 • Proposed amendments are pursuant to and consistent with the Kittery Comprehensive
76 Plan. They would:
77
78 • Protect sensitive environmental resources such as groundwater, wetlands, watersheds and
79 sand-and-gravel aquifers (Comp. Plan pp.43-44, pp.62-64, p.125)
80

81 In addition:
82

- 83 • Requiring deeper soil for passing test pits ensures greater separation between a SWD
84 system and the water table or bedrock. This improves the filtering of effluents. Although no
85 current SWD system can filter excreted pharmaceuticals or all household chemicals, better
86 soil filtration would provide greater protection from nitrogen and phosphorous
87 contamination, called "nutrient pollution", of our groundwater, watersheds and wetlands.
88 Soil scientists confirmed the value of this strategy.
89
90 • The proposal would not create a disincentive for the routine replacement of old or failing
91 SWD systems. Such routine replacements would be held to less-stringent standards than
92 those for new systems and systems being enlarged due to expanded use.
93
94 • Removing the outdated soil manual reference allows current best practices to be employed
95 when siting SWD systems. This protects the Town's interests and the applicant's.
96
97 • Removing other topics from this subsection would make SWD regulations less confusing.
98

99 FISCAL IMPACT:
100

101 None

102 **CODE AMENDMENT**

103 **Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT**

104 **Article VII. Sewage Disposal**

105 **16.8.7.1 Sanitary Sewer System and Septic Disposal.**

106
107 A. An existing or new dwelling unit or structure that requires wastewater disposal must connect to town sewer
108 where sewer is within 100 feet of the property line and where gravity flow can be obtained per Town Code Title
109 13, Chapter 13.1. Sewer Service System. Individual dwellings and structures in approved and recorded
110 developments where town sewer becomes available as described in this paragraph must connect per the
111 requirements of Title 13, Chapter 13.1. {NEW}
112

113 B. Where town sewer is located within one thousand (1,000) feet of the property line of a commercial or industrial
114 development or a residential subdivision, the developer shall connect to town sewer per the town Wastewater
115 Treatment Department (WTD) specifications. The developer shall provide written certification to the Planning
116 Board from the WTD that the proposed addition to town sewer is within the capacity of the collection and
117 wastewater treatment system. {MOVED FROM 16.8.7.3}
118

119 C. Sewer mains, service lines and related improvements must be installed at the developer's expense. Service
120 lines must extend to each lot's boundary line. Connections to town sewer must be installed in accordance to this
121 Article and Title 13.1 Sewer Service System in the Kittery Town Code.
122 {MOVED FROM 16.8.7.1.E}
123

124 D. Proposal and construction drawings must be approved in writing by the town WTD. All required approvals
125 must be secured before the start of final plan review.
126 {MOVED FROM 16.8.7.1.A & F}
127

128 E. When town sewer connection pursuant to subsection B above is not feasible as determined by the Planning
129 Board, the Board may allow individual or common subsurface wastewater disposal systems in accordance with
130 Section 16.8.7.2. To determine feasibility, the developer shall submit information that considers the unique
131 physical circumstances of the property and sewer connection alternatives to conventional construction/installation
132 techniques such as, but not limited to, horizontal/directional boring and low pressure sewer. The developer's
133 information must be accompanied by findings and recommendations of the town Peer-Review Engineer. In
134 determining feasibility, the Board may not base its decision solely on additional costs associated with a sewer
135 connection. The intent of this subsection is not to avoid the requirements of Title 13.1 Sewer Service System in
136 the Kittery Town Code. {MODIFIED & MOVED FROM 16.8.7.1.B}
137

138 A. Public sanitary sewer disposal system connections must be installed, in accordance to Article VII o Chapter
139 16.8, with proposal and construction drawings reviewed and approved in writing by the servicing sanitary sewer
140 agency. {Moved and Modified, SEE 16.8.7.1.D}
141

142 B. If, in the opinion of the Board, service to each lot by a sanitary sewer system is not feasible, the Board may
143 allow individual subsurface waste disposal, or a separate central sewage collection system to be used in
144 accordance with Section 16.8.7.4. {Moved and Modified, SEE 16.8.7.1.E}
145

146 C. In no instance may an initial installation septic disposal system be allowed in soils rated poor or very poor for
147 such purpose by the Soil Suitability Guide for Land Use Planning in Maine. {DELETED}
148

149 D. If the developer proposes individual subsurface waste disposal or central collection system and waste
150 generated is of a "significant" nature, or if waste is to be discharged, treated or untreated, into any body of water,
151 approval must be obtained in writing from the Maine Department of Environmental Protection. {DELETED}
152

153 E. Sanitary sewer disposal systems must be installed, at the expense of the developer, to the individual lot
154 boundary line. {Moved and Modified, SEE 16.8.7.1.C}
155

156 F. All required approvals of a sewage disposal system must be secured before official submission of a final plan.
157 {Moved and Modified, SEE 16.8.7.1.D}
158

159 **16.8.7.2 Subsurface Wastewater Disposal System**

160
161 A. The developer shall submit plans for subsurface wastewater disposal designed by a Maine Licensed Site
162 Evaluator in full compliance with the requirements of the State of Maine Plumbing Code, Subsurface Wastewater
163 Disposal Rules, and this Code. Subsurface wastewater disposal systems (SWDS) must be constructed according
164 to the approved plan. (MODIFIED & MOVED FROM 16.8.7.2)
165

166 B.G. All first-time subsurface wastewater subsurface sewage disposal systems must be installed in
167 conformance with the State of Maine Subsurface Wastewater Disposal Rules and this Code. The Maine
168 Subsurface Wastewater Disposal rules require new systems, excluding fill extensions, to be constructed no less
169 than one hundred (100) feet, horizontal distance, from the normal high water line of a perennial water body. The
170 minimum setback distance for a new subsurface disposal system may not be reduced by variance. (Moved to item
171 1 below) The following also apply:

172 1. The minimum setback distance for a first-time subsurface disposal system may not be reduced by variance.
173 (MODIFIED & MOVED FROM 16.8.7.1.G above)

174 2. Clearing or removal of woody vegetation necessary to site a first-time system and any associated fill
175 extensions, must may not extend closer than is allowed in Table 16.9 Minimum Setbacks from Wetlands and
176 Water Bodies for Subsurface Sewage Disposal one hundred (100) feet, horizontal distance, from the normal high
177 water line of a water body or the upland edge of a wetland. (MODIFIED & MOVED FROM 16.8.7.1.G.1)

178 2. Holding tanks are not allowed for a first-time residential use in the Shoreland Overlay Zone. (MOVED &
179 MODIFIED, SEE 16.8.7.3.B.2)
180

181 C. Replacement of subsurface wastewater disposal systems (SWDS) for existing legal uses:

182 1. Where no expansion is proposed, the SWDS must comply with 16.8.7.2 and Table 16.9 to the extent
183 practicable and otherwise are allowed per the Maine Subsurface Wastewater Disposal Rules; or

184 2. Where expansion is proposed, the SWDS must comply with 16.8.7.2 and Table 16.9 in addition to the Maine
185 Subsurface Wastewater Disposal Rules.

186 NOTE: For the purposes of this subsection "expansion" is as defined in Section 9 of the Maine Subsurface
187 Wastewater Disposal Rules
188 (NEW)
189

190 **16.8.7.2 Design and Standards.**

191 A developer must submit plans for sewage disposal designed by a Maine licensed site evaluator in full
192 compliance with the requirements of the State of Maine Plumbing Code and/or Subsurface Wastewater Disposal
193 Rules. (MOVED AND MODIFIED, SEE 16.8.7.2.A)
194

195 **16.8.7.3 Public Sewer Connection Required.**

196 Where a public sanitary sewer line is located within one thousand (1,000) feet of a proposed development at its
197 nearest point, the developer must connect with such sanitary sewer line with a main as required by the sewer
198 department, and provide written certification to the Board from the department that the proposed addition to
199 service is within the capacity of the system's collection and treatment system. (MOVED AND MODIFIED, SEE
200 16.8.7.1.B)
201

202 **D. 16.8.7.4 Private Subsurface Wastewater Disposal Systems; on Unimproved Lots Created after April 26,**
203 **1990.**
204

205 A. Where public sewer connection is not feasible, the developer must submit evidence of soil suitability for
206 subsurface sewage wastewater disposal systems, i.e. test pit data and other information as required by the State
207 of Maine Subsurface Wastewater Disposal Rules and this Code. In addition:

208 1. Additionally, eOn lots with a limiting factor identified as being within twenty-four (24) inches of the surface, a
209 second site with suitable soils must be shown as a reserve area for future replacement should the primary site
210 fail. Such reserve area is to be shown on the plan; not be built upon; and, must comply with all the setback
211 requirements of the Subsurface Wastewater Disposal Rules and this Code. (MODIFIED FROM 16.8.7.4.A)
212

213 2.B. In no instance may a primary or reserve disposal area be permitted on soils or on a lot which requires
214 requiring a First-Time sSystem vVariance Request from per the State of Maine Subsurface Wastewater Disposal
215 Rules.
216

217 3.C. Test pits must be of sufficient numbers (a minimum of two) and so located at representative points within
218 the each disposal area (primary and reserve sites) to assureensure that the proposed disposal area system can
219 be located on soils and slopes which that meet the criteria of the State of Maine Subsurface Wastewater Disposal

Rules and the State Plumbing Code. Passing test pits must have a minimum of fifteen (15) inches of existing natural mineral soil above the limiting factor, except in the Shoreland and Resource Protection Overlay Zones where passing test pits must have a minimum of twenty-one (21) inches of natural mineral soil above the limiting factor. All passing and failing test pits must be shown on plan.

E. The developer shall install advanced pre-treatment to subsurface wastewater disposal systems that are located inside or within 100 feet of areas that include a sand and gravel aquifer as indicated on the Maine Department of Agriculture, Conservation and Forestry (DACF) Geological Survey Maps or determined by Maine DACF staff.
{NEW}

16.8.7.3 Holding Tanks

A. Holding tanks are not allowed for a first-time residential use. {MODIFIED & MOVED FROM 16.8.7.1.G.2}

Chapter 16.2 DEFINITIONS

16.2.2 Definitions

~~Subsurface sewage disposal system means a collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term does not include any wastewater discharge system licensed under 38 M.R.S. §414, any surface wastewater disposal system licensed under 38 M.R.S. §413, §1A, or any public sewer. The term does not include a wastewater disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in 38 M.R.S. §13.1.~~

Septic System (see Subsurface wastewater disposal system)

Subsurface wastewater disposal system (SWDS) means any system designed to dispose of waste or wastewater on or beneath the surface of the earth. These include but are not limited to septic tanks, disposal fields, holding tanks, pretreatment filters, piping, or any other fixture, mechanism or apparatus used for such purposes. This definition does not include any discharge system licensed under 38 M.R.S. §414, any surface wastewater disposal system, or any municipal or quasi-municipal sewer or wastewater treatment system. (see also: Wastewater and Domestic wastewater)

Wastewater means any domestic wastewater, or other wastewater from commercial, industrial or residential sources that has attributes similar to those of domestic wastewater. This term specifically excludes hazardous or toxic wastes and materials. (Applicable only to Title 16)

Wastewater, Domestic means any wastewater produced by ordinary living uses, including liquid waste containing animal or vegetable matter in suspension or solution, or the water-carried waste from the discharge of water closets, laundry tubs, washing machines, sinks, dishwashers, or other source of water-carried wastes of human origin.

Town of Kittery Ordinance Revision Memorandum

Originator(s): A. Grinnell, Planning Board Chair;	Council Sponsor(s): J. Thomson, Chair
Council meeting date: September 14, 2015 Joint Workshop Meeting: 9/8, 10/6, 11/10/2014, & 5/4/2015	Title: Lots
Town code section: Title 16, §16.8.16	History: Amendment

ENCLOSURE: CODE AMENDMENT

PURPOSE OF PROPOSAL:

Add clarity through changes to sentence structure and general formatting.

SUMMARY OF PROPOSAL/AMENDMENT:

16.8.16.2.A (lines 28-30) Lot shape requirements have been modified slightly to improve clarity as recommended by the Maine Municipal Association's legal department.

JUSTIFICATION:

- This proposal would improve clarity and promote consistency in applying the code.

FISCAL IMPACT: None

CODE AMENDMENT

CHAPTER 16.8 DESIGN AND PERFORMANCE STANDARDS

Article XVI. Lots

16.8.16.1 Dimensions.

The lot size, width, depth and shape and orientation and the minimum building setback lines must be appropriate for the location of the development and for the type of development and use contemplated. The lot configuration should be designed to maximize access to solar energy for building sites with suitable orientation.

16.8.16.92 Lot Shape.

A. The ratio of lot length to width ~~shall~~must not be more than three to one. Flag-shaped lots are prohibited. and ~~Other~~ odd-shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are also prohibited. (MOVED AND MODIFIED FROM 16.8.16.9.A)

B. Spaghetti-Lots Prohibited. If any lots in a proposed subdivision have shore frontage on a river, stream, brook or coastal wetland as these features are defined in Code Title 38, M.R.S. §480-B, none of the lots created within the subdivision may have a lot depth to shore frontage ratio greater than five to one.
(MOVED FROM 16.8.16.9.B)

~~16.8.16.2 Off-street Parking.~~ (MOVED AND RENUMBERED; 16.8.16.8 BELOW)

~~Depth and width of properties reserved or laid out for all purposes must be adequate to provide for off-street parking and service facilities for vehicles required by type of development and use contemplated.~~

~~16.8.16.3 Land Subdivision.~~ (MOVED AND RENUMBERED; 16.8.16.10 BELOW)

~~The subdividing of land must conform to the requirements of Chapter 16.3.~~

16.8.16.43 Double/Reverse Frontage Lots.

Double frontage and reverse frontage lots are to be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation. A planting screen easement of at least ten (10) feet, across which there may be no right of access, is to be provided along the lot lines abutting such a traffic artery or other disadvantageous use.

16.8.16.54 Side-lot Lines.

Side-lot lines must be substantially at right angles or radial to street lines.

16.8.16.65 Substantially Larger Lots.

Where a tract is subdivided into lots substantially larger than the minimum size required in the zone in which a subdivision is located, and where no covenants exist to preclude lots from resubdivision, the Board may require that streets and lots be laid out so as to permit future resubdivision in accordance with the requirements contained in these standards.

16.8.16.76 Multiple Frontages.

When lots have frontage on two or more streets, the plan and deed restrictions must indicate vehicular access to be located only on the least-traveled way.

16.8.16.87 Divided Lots.

If a lot on one side of a stream, tidal water, road or other similar barrier fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of such barrier to meet the minimum lot size unless in conformance with Article II of Chapter 16.7.

~~16.8.16.9 Lot Shape.~~ (MOVED, MODIFIED AND RENUMBERED; 16.8.16.2 ABOVE)

~~A. The ratio of lot length to width shall not be more than three to one. Flag lots and other odd-shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.~~

74 B. Spaghetti Lots Prohibited. If any lots in a proposed subdivision have shore frontage on a river, stream, brook
75 or coastal wetland as these features are defined in Code 38, M.R.S. §480-B, none of the lots created within the
76 subdivision may have a lot depth to shore frontage ratio greater than five to one.
77

78 **16.8.16.28 Off-street Parking.**

79 Depth and width of properties reserved or laid out for all purposes must be adequate to provide for off-street
80 parking and service facilities for vehicles required by type of development and use contemplated.
81

82 {MOVED AND ONLY AMENDED SECTION NUMBER}

83 **16.8.16.409 Access to Arterial Street.**

84 Where a major subdivision abuts or contains an existing or proposed arterial street, no residential lot may have
85 vehicular access directly onto the arterial street. This requirement must be noted on the plan and in the deed of
86 any lot with frontage on the arterial street.
87

88 **16.8.16.310 Land Subdivision.**

89 The subdividing of land must conform to the requirements of Chapter 16.3.
90

{MOVED AND ONLY AMENDED SECTION NUMBER}

Town of Kittery Ordinance Revision Memorandum

Originator(s): A. Grinnell, Planning Board Chair;	Council Sponsor(s): J. Thomson, Chair
Council meeting date: September 14, 2015 Joint Workshop Meeting: 9/8, 10/6, 11/10/2014, & 5/4/2015	Title: Soil Suitability
Town code section: Title 16, §16.9.1.4	History: Amendment

ENCLOSURE: CODE AMENDMENT

PURPOSE OF PROPOSAL:

The proposal would bring clarity to the law with respect to soil assessment and would codify what is current and best practice.

SUMMARY OF PROPOSAL/AMENDMENT:

Section 16.9.1.4.C (lines 51-64)

This section would codify current best practices as endorsed by the Maine Association of Professional Soil Scientists.

Current section 16.9.1.4.C (lines 85-94)

This section, which contains lot-size restrictions, would be deleted since the minimum land area per dwelling unit has been proposed to include similar restrictions.

Section 16.9.1.4.E (lines 75-76)

This section would require soil reports, class A high-intensity soil surveys and soil mapping for cluster developments and other high-intensity land uses.

Section 16.9.1.4.F (lines 79-83)

This section would permit the Planning Board to grant a waiver from the above requirements for a low-intensity, non-clustered development upon the applicant's request. The Board would be required to consider the report of the Peer Review Engineer prior to granting a waiver.

JUSTIFICATION:

- The current code lacks clarity in describing various soil assessment requirements. It is hard to understand and implement. The amendment would correct these problems.
- Small building projects may not be made to meet the same high standards that are required of high-intensity developments.
- The amendment would permit the Board to grant regulatory relief on a case-by-case basis which will save the applicant both time and money.
- The proposal would amend the ordinance to use current terminology and is consistent with the recommendations of the Maine Association of Professional Soil Scientists.

FISCAL IMPACT: None

CODE AMENDMENT

Chapter 16.9 DESIGN AND PERFORMANCE STANDARDS – NATURAL ENVIRONMENT

16.9.1.4 Soil Suitability.

A. The requirements and standards of the State of Maine Department of Environmental Protection, Department of Health and Welfare, the latest edition of the State Plumbing Code and this Code must be met.

B. All land uses must be located on soils upon which the proposed uses or structures can be established or maintained without causing adverse environmental effects, including, but not limited to, severe erosion, mass soil movement, improper drainage, and water pollution to surface water and groundwater, whether during or after construction. {MOVED FROM 16.9.1.4.E}

~~BC. Any proposed subdivision development requires a soil survey report covering the development based on information from the Maine Natural Resources Conservation Service (NRCS). Where subsurface wastewater disposal is required and Where the Soil Survey for York County or information from the Maine NRCS shows soils with severe restrictions for development, a Class A h(High iIntensity) Soils report Survey must be provided by an accredited a soils scientist, registered certified in the state of Maine, using the standards of high intensity soil mapping as established by the Society of Soil Scientists of Northern New England The survey must be based on the Maine Association of Professional Soil Scientists Standards for Soil Survey, Revised 3/2009 or subsequent revision. must be provided. In addition to evaluating soil properties, the soil scientist shall analyze and document characteristics of surrounding land and water areas, maximum groundwater elevation, presence of ledge, drainage conditions and any other data deemed appropriate by the soil scientist or required by the Planning Board. The soil scientist shall include recommendations for the proposed use to counteract soil limitations where any exist. A Class A Soil Survey must include a written Soil Narrative Report accompanied by a Soil Map that depicts soil delineations and symbols identified in the report. The Soil Map must be prepared at the same scale as that of the development plan with wetlands and floodplain depicted on both.~~ {MOVED AND MODIFIED FROM 16.9.1.4.E}

D. When constructing a new dwelling unit on soils identified with severe restrictions, requiring subsurface wastewater disposal and on a lot not subject to subdivision regulation, a Class A (High Intensity) Soil Survey is not required. However, the site's soil suitability must be assessed and documented in a soil report by a Maine certified soil scientist, a Maine certified geologist or Maine licensed site evaluator. Prior to the issuance of a Building Permit, the soil report must be submitted to the Code Enforcement Officer (CEO) for review and assessment of compliance with this Code. {MOVED AND MODIFIED FROM 16.9.1.4.E}

E. Cluster residential and cluster mixed-use, commercial or industrial development and similar intensive land uses require a Class A (High Intensity) Soil Survey by a Maine certified soil scientist. {NEW AND CURRENT PRACTICE}

F. Where non-clustered development is limited in scale and intensity the developer may request the Class A (High Intensity) Soil Survey required by 16.9.1.4.E. above be waived by the Planning Board. The Board may grant said waiver only after consideration by the town's Peer Review Engineer of the developer's explanation as to why a Class A Soil Survey is not warranted. In the event a Class A Soil Survey is not required, the site's soil suitability must be sufficiently assessed for compliance with this Code. {NEW}

~~C. Lot size determination is as follows:~~

~~1. Areas containing hydric soil may be used to fulfill twenty five (25) percent of the minimum lot size required by this Code, provided that the non-wetland area is sufficient in size and configuration to adequately accommodate all buildings and required utilities such as sewage disposal and water supply (including primary and reserve leach field locations within required zoning setbacks).~~

~~2. Lots served by municipal water and sewer may use areas of poorly drained soil to fulfill up to fifty (50) percent of the minimum required lot size.~~

94 3. ~~No areas of surface water, wetlands, right of way, or easement, including utility easements or areas~~
95 ~~designated as very poorly drained soil may be used to satisfy minimum lot sizes, except as noted above.~~

96 {DELETED}

97
98 D.G. If the soil report classification is challenged by the applicant, an abutter, a landowner, the CEO, or the
99 Conservation Commission, petition must be made in writing to the Planning Board. With such petition, or a
100 challenge by the Planning Board, the Planning Board shall determine whether a certified qualified soil scientist
101 should conduct an on-site investigation and at whose expense. The soil scientist shall present evidence in
102 written form to the Planning Board, which evidence forms the basis for the Board's decision.

103
104 E. ~~All land uses must be located on soils in or upon which the proposed uses or structures can be established~~
105 ~~or maintained without causing adverse environmental impacts, including, severe erosion, mass soil movement,~~
106 ~~improper drainage, and water pollution, whether during or after construction. Proposed uses requiring~~
107 ~~subsurface waste disposal, and commercial or industrial development and other similar intensive land uses,~~
108 ~~require a soils report based on an on-site investigation and must be prepared by state-certified professionals.~~
109 ~~Certified persons may include Maine certified soil scientists, Maine registered professional engineers, Maine~~
110 ~~certified geologists and other persons who have training and experience in the recognition and evaluation of soil~~
111 ~~properties. The report must be based upon the analysis of the characteristics of the soil and surrounding land~~
112 ~~and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent~~
113 ~~data which the evaluator deems appropriate. The soils report must include recommendations for a proposed use~~
114 ~~to counteract soil limitations where any exist. (MODIFIED AND MOVED TO 16.9.1.4.B, C & D ABOVE)~~
115
116

Town of Kittery Ordinance Revision Memorandum

Originator(s): A. Grinnell, Planning Board Chair;	Council Sponsor(s): J. Thomson, Chair
Council meeting date: September 14, 2015 Joint Workshop Meeting: none	Title: Various
Town code section: Title 16, §16.4.4.1; 16.10.3.7; 16.10.3.8; 16.10.8.2.2; and 16.10.9.1	History: Amendment

ENCLOSURES: CODE AMENDMENT

PURPOSE OF PROPOSAL:

The proposal would bring clarity to the law with respect to inspections and peer-review consultation and would codify what is current practice, specifically with regard to pre-construction meetings.

SUMMARY OF PROPOSAL/AMENDMENT:

Section 16.4.4.1.A (lines 44-53)

This section would codify current practice to hold a pre-construction meeting prior to clearing and earthwork and identifies associated expectations, including: who is authorized to hold such meetings; in what manner are they held and when are they required. The amendment also identifies who the inspecting official is.

Section 16.4.4.1.B (lines 55-64)

This section clarifies the inspection process.

Section 16.4.4.1.D. (lines 77-80)

This new provision clarifies in what manner the required inspection is paid for, through the current provision in Title 3.3 of the Town Code, Applicant Service Account.

Section 16.10.3.7 (lines 87-127)

Revised this section to only focus on peer-review consultation and not inspections. The latter is now in 16.4.4.1.

Section 16.10.8.2.2 (lines 139-165)

This section clarifies the inspection process as it relates to the Town's performance guaranty requirement. Provides more flexibility to the amount of funds deposited for inspection and the provision for a 10% retainage of the performance guaranty to cover construction items that may need additional time to determine compliance, as with installation that involves vegetation.

JUSTIFICATION:

- Amended to read: The amendments would codify the requirement that essential pre-construction meetings are conducted to ensure that all parties are in agreement over how to execute the approved development. The amendment would codify current practice.
- The current code lacks clarity in describing the inspection process and peer-review process.

FISCAL IMPACT: None.

Chapter 16.4 ADMINISTRATION and ENFORCEMENT

16.4.4.1 Inspection of Required Improvements.

A. A pre-construction meeting is required for a Planning Board approved Site Plan, Subdivision Plan, and Right-Of-Way Plan, and for all other plans is at the discretion of the Town Planner. A pre-construction meeting for approved development not subject to Planning Board review is at the discretion of the Code Enforcement Officer. Prior to the commencement of any work associated with development approved in accordance with this Code, the developer or duly authorized representative must provide a schedule of expected construction activities by phase to the inspecting official (the Code Enforcement Officer (CEO) or their representative, or when applicable, the Town's Peer Review Engineer), and coordinate a pre-construction meeting. Attendance at said meeting must at a minimum include authorized representation from the Town, the developer and their General Contractor. Meeting minutes must be prepared by the Town's representative and distributed to all attendees and the Town Planner.

~~B. A. The developer or General Contractor shall coordinate inspections with the inspecting official and provide written notice At least five seven (7) days prior to commencing each major phase of construction as outlined in the construction schedule. When all phases of work are complete the General Contractor shall request a final inspection from the inspecting official who shall prepare a punch-list of any outstanding items to be completed, within seven (7) days of the final inspection. Once all outstanding items have been completed the developer or the General Contractor shall coordinate a final walk-through where the inspecting official determines if the construction has been completed in accordance with the approved plans. The inspecting official shall provide in writing to the developer or the General Contractor within seven (7) days of the final walk-through what, if any, construction is not complete or confirm that the development is complete and has been constructed according to the approved plans. of required improvements, the applicant or duly authorized representative must notify the CEO, in writing, of the time when construction of such improvements is proposed to commence, so inspection may be made to ensure all specifications are met during the construction of the required improvements, and to insure the satisfactory completion of improvements and utilities required by the Planning Board.~~

~~C. B. If the inspecting official finds, upon inspection of the required improvements, that any of the required improvements have not been constructed in accordance with the Planning Board approved plans and specifications filed by the developer, the inspecting official must report in writing to the Town Planner, Planning Board, CEO and the developer or duly authorized representative of the developer, and when applicable the CEO. The Town Planner shall inform the Planning Board of any issues identified by the inspections. The Town shall take any steps necessary to preserve the municipality's rights.~~

D. Where applicable and in advance of any construction the developer must deposit sufficient funds for said inspections in an Applicant's Service Account per Title 3.3. The amount is based on a scope of services and fee prepared by the Town's Peer Review Engineer after review of the developer's construction estimate prepared by a professional engineer or a qualified contractor.

Chapter 16.10 DEVELOPMENT PLAN APPLICATION AND REVIEW

Article III. Development Plan Review and Approval Process

16.10.3.7 Independent ~~Peer Review/Inspection Consultant Review.~~

A. ~~All development may be reviewed by an independent review/inspection consultant(s) engaged by the Code Enforcement Officer, with the approval of the Town manager, after prior notification to and at the expense of the applicant, to assure compliance with all requirements of this Code related to public health, safety and welfare and the abatement of nuisances. The estimated costs of such studies must be deposited with the Town prior to their undertaking. {MOVED AND MODIFIED. SEE 16.10.3.7.A.1 AS PROPOSED}~~

A.4. The Town Planner, in addition to the Planning Board or, after Town Manager's approval, the Town Planner and the Code Enforcement Officer, may require the applicant to pay the cost of an independent consultant or specialist engaged by the Town, at the applicant's expense if required by the Town Planner and approved by the Town manager, to

1. determine compliance with all requirements of this Code related to public health, safety and welfare, and the abatement of nuisances; or {MOVED AND MODIFIED FROM CURRENT 16.10.3.7.A.}

2. assist with the technical review of applications submitted for new or amended development. The estimated cost of such a review will be deposited in a Town escrow account prior to the application review/inspection work being conducted. Remaining funds in the account will be returned to the applicant or, at the applicant's option, used to pay any further costs associated with the project application.

B. When peer-review is required of the applicant, sufficient funds, based on a written estimate by the required consultant, must be deposited in an Applicant's Service Account per Title 3.3, prior to commencing said review and continuing with the review of the development plan application. {NEW}

~~2. Compliance Inspection Fees. The reviewing/inspection consultant, upon direction of the Town Planner, will be assigned to conduct compliance inspections of the approved new or amended plans to assure compliance with the codes and conditions of approval. Inspection compliance reports will become a part of the applicant's project file and submitted at agreed to intervals based on the required inspection items developed between the Town and the developer following Town approval. Copies of all inspection reports will be submitted to the Town Planner, CEO, and project owner or agent. The estimated cost of the compliance inspection will be deposited in a Town escrow account prior to the inspection work being conducted. Remaining funds in the account will be returned to the applicant or, at the applicant's option, used to pay any further costs associated with the project application. {DELETED}~~

~~3. Records of application review and inspection reports are public records. {DELETED}~~

~~4. Determination of the need for application review and/or compliance inspection is made by the Town Planner, with the oversight of the Town manager. The Planning Board will be advised of such requests as they occur. {DELETED}~~

~~5. As part of each request, feedback about the process will be gathered by the reviewing/inspection consultant from the applicant, Planning Board, and planning department, and made a part of the record. {DELETED}~~

16.10.3.8 Independent Review Applicant Funding.

~~The Planning Board must require an applicant to pay the costs of an independent consultant or specialist whose services the Planning Board may require, at its discretion, to analyze any or all of the application, in the Town's interest. {MOVED AND MODIFIED TO 16.10.3.7.A}~~

Article VIII. Planning Board Final Plan Action

16.10.8.2.2 Performance Guaranty Conditions.

Where improvements for the common use of future lot or unit owners, lessees or the general public have been approved, the Planning Board must shall require a performance guaranty of an amount sufficient to pay

for said improvements as a part of the agreement. The applicant must file with the Town, as a condition for approval of the final plan, a performance guaranty in a form acceptable to the Town manager.

1. The amount must be at least equal to the total cost of furnishing, installing, connecting and completing all street grading, paving, storm drainage and utilities and other improvements specified in the development master plan and shown on the final plan, ~~and~~ In addition, it must guarantee the satisfactory coordination with other related phases of development and satisfactory completion of all specified improvements.

2. Where the Planning Board reviews and approves project phasing, the Board may also require the developer to provide performance ~~assurances~~ guaranties directly related to a particular phase or phases of the project where it can be demonstrated that the uncompleted portions thereof do not detrimentally affect the completed development or the current and ongoing development.

3. No phase of construction may commence until the required performance ~~assurances~~ guaranties have been met.

4. Performance ~~guarantees~~ must be based on professionally prepared cost estimates for all approved infrastructure improvements, and verified by the Town's Peer Review Engineer. The cost estimate must include an additional ten (10) percent cost for contingencies and/or warranty period. ~~include an inspection escrow agreement for site inspection equal to two percent of construction costs.~~
(~~Ordained 9/26/11; effective 10/27/11~~)

5. Ten (10) percent of the performance guaranty may be retained to cover circumstances where additional time or resources are required for satisfactory final completion of improvements that include, but are not limited to: vegetated swales and slopes, plantings, and lawns. This warranty period may be up to one year from installation.

6. Inspection of improvements that require a performance guaranty must be performed at the expense of the applicant and in accordance with Title 16.4.4.1. Inspection funds for construction requiring a performance guaranty shall equal two (2) percent of construction costs unless the Peer Review Engineer provides sufficient reason for a greater amount.

Article IX. Post Approval

16.10.9.1 Post Approval Actions Required.

16.10.9.1.1 Approved Final ~~Subdivision~~ Plan.

A. An approved subdivision plan must be filed with the York County Registry of Deeds within ninety (90) days from date of such approval. Any plan not so filed and recorded is null and void, unless particular circumstances dictate and upon petition, the Planning Board grants an extension which may not exceed two additional ninety (90) day periods.

B. Where applicable, the Stormwater and Erosion Control Maintenance Agreement that must be included in the Document of Covenants, Homeowners Documents and/or as riders to the individual deed must be recorded with the York County Registry of Deeds.

C. A pre-construction meeting, in accordance with Title 16.4.4.1 must be held prior to any clearing or earthwork.

Town of Kittery Ordinance Revision Memorandum

Originator(s): A. Grinnell, Planning Board Chair;	Council Sponsor(s): J. Thomson, Chair
Council meeting date: September 14, 2015 Joint Workshop Meeting: none	Title: Nonconforming Structure Reconstruction
Town code section: Title 16, §16.7.3.5.6	History: Amendment

ENCLOSURES: CODE AMENDMENT

PURPOSE OF PROPOSAL:

The proposal would address a provision that was omitted in the 2010 recodification. Prior to 2010 Title 16.28.140 Reconstruction of nonconforming buildings allowed for the in-place replacement of a nonconforming building outside of the Shoreland Zone. This provision allows the Code Enforcement Officer to issue permit for the reconstruction of a nonconforming structure located outside of the Shoreland or Resource Protection Overlay Zones.

SUMMARY OF PROPOSAL/AMENDMENT:

Section 16.7.3.5.6.C (lines 48-53)

The amendment includes most of what was originally in the Code prior to 2010 with the exception that the time period was increased from 12 to 18 months and removal of the clause *or any cause other than the willful act of the owner or his or her agent*, in qualifying the cause of damage.

Section 16.7.3.5.6 (lines 31-70)

The amendment includes minor changes to clarify which provisions apply to the shoreland zone, renumbering and syntax.

JUSTIFICATION:

- The Code currently lacks a provision to allow for the reconstruction of nonconforming structures located outside of the Shoreland or Resource Protection Overlay Zones and
- The amendment corrects what appears to be unintentional omission during the 2010 recodification.

FISCAL IMPACT: None.

Code Amendment

16.7.3.5.6 Nonconforming Structure Reconstruction.

A. In the Shoreland or Resource Protection Overlay Zone(s), Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, damaged or destroyed, by any cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board. ~~(in cases where the structure is located in a Shoreland Overlay of Resources Protection Overlay Zone) or Code Enforcement Officer, in accordance with this Code.~~

B. In the Shoreland or Resource Protection Overlay Zone(s), Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and removed, damaged or destroyed by any cause ~~through no fault of action by the owner~~ by 50% or less of the market value of the structure before such damage, destruction or removal, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer ~~or the Planning Board (in cases where the structure was located in the Shoreland Overlay or Resources Protection Overlay Zone)~~ within twelve (12) months of the established date of damage or destruction. [Amended and moved; formerly 16.7.3.5.6.D]

C. Outside of the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is removed, damaged or destroyed by any cause may be restored or reconstructed in place if a permit is obtained from the Code Enforcement Officer within eighteen (18) months of the date of said removal, damage or destruction. Such restoration or reconstruction must not make the structure more nonconforming than the prior nonconforming structure. Nothing in this section prevents the demolition of the remains of any building so damaged or destroyed.

D. In the Shoreland or Resource Protection Overlay Zone(s), if the total amount of floor area and volume of the original structure can be reconstructed beyond the required setback area, no portion of the reconstructed structure may be reconstructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation to reconstruct a structure, vegetation will be replanted in accordance with Section 16.7.3.5.4.C, Nonconforming Structure Relocation. Application for a demolition permit for any structure that has been partially damaged must be made to the Code Enforcement Officer. [Amended and moved; formerly 16.7.3.5.6.C]

E. In no case ~~will~~may a structure be reconstructed or replaced so as to increase its non-conformity. In the Shoreland and Resource Protection Overlay Zones, if the reconstructed or replacement structure is less than the required setback it may not be any larger than the original structure, except as allowed pursuant to Section 16.7.3.5.5, Nonconforming Structures Repair and/or Expansion, as determined by the nonconforming floor area and volume of the reconstructed or replaced structure at its new location. [Amended and moved; formerly 16.7.3.5.6.B]

F. In determining whether the structure reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or Code Enforcement Officer must consider, in addition to the criteria in Section 16.7.3.5.4, Nonconforming Structure Relocation, the physical condition and type of foundation present, if any. [Moved; formerly 16.7.3.5.6.E]

END

Town of Kittery Ordinance Revision Memorandum

Originator(s): A. Grinnell, Planning Board Chair;	Council Sponsor(s): J. Thomson, Chair
Council meeting date: September 14, 2015 Joint Workshop Meeting: none	Title: Permit Period {Renewal Fee}
Town code section: Title 16, §16.5.2.4	History: Amendment

ENCLOSURES: CODE AMENDMENT

PURPOSE OF PROPOSAL:

The proposal would address a May 11, 2015 Town Council resolution that anticipates a code amendment to allow for the renewal of a building permit that includes only the base application fee.

SUMMARY OF PROPOSAL/AMENDMENT:

Section 16.5.2.4.A (lines 33-36)

This provisions allows for a single one-time renewal if work has not commenced within six months with payment of the base application fee (\$25 for residential work and \$100 for commercial work as outlined in Appendix A). The renewal is only good for six months, after which time, if work still has not commenced, all fees are due for the re-issuance of the building permit.

Section 16.5.2.4.B-C (lines 38-45)

This portion of the amendment clarifies the process for receiving approval to extend a building permit if work is not completed within two years and supports the double fee for after-the-fact permits as outlined in Appendix A.

JUSTIFICATION:

- The Code currently lacks clear direction relating to the renewal of a building permit and
- The amendment provides for better correlation between the Code and the Fee Schedule in Appendix A

FISCAL IMPACT: None.

Code Amendment

16.5.2.4 Permit Period.

A permit expires if the Code Enforcement Officer determines no substantial work has been commenced within six (6) months from date of issue. A permit expires if work is not substantially complete within two (2) years from date of issue. Expired permits may be renewed upon written request and justifiable cause demonstrated to the Code Enforcement Officer's satisfaction. ~~application and payment of a renewal fee.~~ Written request for renewal must be made prior to the permit expiration.

A.. The permit may be renewed one time only for a single six (6) month period to commence work, upon payment of the base application fee. If the Code Enforcement Officer determines substantial work has not commenced upon expiration of the six (6) month renewal period, a new permit application and payment of all applicable new permit fees must be submitted.

B. The permit may be renewed one time only for a single six (6) month period to complete work, upon payment of the base application fee. If work is not substantially complete as determined by the Code Enforcement Officer upon expiration of the six (6) month renewal period, a new permit application and payment of all applicable new permit fees must be submitted based on the value of the remaining permitted work.

C. Any work commenced or completed without the issue of a permit as required by this Code is subject to an after-the-fact permit with all applicable fees doubled.

Town of Kittery Ordinance Revision Memorandum

Originator(s): A. Grinnell, Planning Board Chair;	Council Sponsor(s): J. Thomson, Chair
Council meeting date: September 14, 2015 Joint Workshop Meeting: none	Title: Various {subject is contractor certification for erosion control}
Town code section: Title 16, §16.9.1.3 and §16.2.2	History: Amendment

ENCLOSURES: CODE AMENDMENT

PURPOSE OF PROPOSAL:

The proposal would bring clarity to the law with respect to contractors excavating within the town, especially within the shoreland zone and would codify what is currently the expectation from the Maine DEP, specifically with regard to proper executing of erosion and sedimentation control.

SUMMARY OF PROPOSAL/AMENDMENT:

Section 16.9.1.3.A.1 (lines 37-47)

This section would codify what is recommended and is included in the Maine DEP shoreland zone rules and regulations (MRSA 38, §439-B. Contractors certified in erosion control).

Section 16.9.1.3.A.2 (lines 49-52)

This provision clarifies the intention of the amendment and exempts property owners doing their own work on their property.

JUSTIFICATION:

- Having contractors certified in the proper methods to ensure adequate erosion and sedimentation control while excavating is crucial in the shoreland zone and is good practice for the remaining areas in town.
- The current code lacks the authorization for the Town to enforce a best management practice for managing erosion and sedimentation on properties with significant excavation.
- The amendment codifies good practice and what is likely to be mandated by the Maine DEP in the near future.

FISCAL IMPACT: None.

Code Amendment

16.9.1.3 Prevention of Erosion.

A. No person may perform any act or use the land in a manner which would cause substantial or avoidable erosion, create a nuisance, or alter existing patterns of natural water flow in the Town. This does not affect any extractive operations complying with the standards of performance specified elsewhere in this Code.

1. When an excavation contractor as defined in 16.2.2 performs an activity that requires or results in more than one (1) cubic yard of soil disturbance, the person responsible for management of erosion and sedimentation control practices on site must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed, which will either stay in place permanently or stay in place until the area is sufficiently stabilized with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance shall be included on the permit application. Excavation contractors will have one (1) year from the date of the adoption of this subsection to comply with certification requirements.

2. The above requirement of 16.9.1.3.A.1 does not apply to a property owner performing work themselves, or a person or firm engaged in agriculture or timber harvesting when best management practices for erosion and sedimentation control are used; or municipal, state and federal employees engaged in projects.

B. All development must generally comply with the provisions of the "Environmental Quality Handbook Erosion and Sediment Control" published by the Maine Soil and Water Conservation Commission. ~~Special consideration will be given to the following:~~ The developer must:

1. Select a site with the right soil properties, including natural drainage and topography, for the intended use;
2. Utilize for open space uses those areas with soil unsuitable for construction;
3. Preserve trees and other vegetation wherever possible;
4. Hold lot grading to a minimum by fitting the development to the natural contour of the land, avoid substantial areas of excessive grade;
5. Spread jute matting, straw or other suitable material during construction in critical areas subject to erosion;

6. Construct sediment basins to trap sediment from runoff waters during development. Expose as small an area of subsoil as possible at any one time during development and for as short a period as possible;
7. Provide for disposing of increased runoff caused by changed land formation, paving and construction, and for avoiding sedimentation of runoff channels on or off the site;
8. Plant permanent, and where ~~application~~ applicable indigenous, vegetation and install structures as soon as possible for the purpose of soil stabilization and revegetation;
9. All logging or woodlot roads must be located, constructed and maintained in conformance with the erosion prevention provisions of "Permanent Logging Roads for Better Woodlot Management", published by the U.S. Department of Agriculture.
- C. Where the Board has required a stormwater management and erosion control plan, said plan ~~shall~~ must be endorsed by the York County Soil and Water Conservation District or found satisfactory by the Town's Engineering peer reviewer. (Ordained 9/26/11; effective 10/27/11)
- D. All activities which involve filling, grading, excavation or other similar activities that potentially may result in unstable soil conditions, and which require a permit, must be made known in a written soil erosion and sedimentation control plan in accordance with the "Maine Erosion ~~&and~~ Sediment Control ~~Best Management Practices (BMPs)~~ Field Guide for Contractors", ~~March 2003~~ 2015 and as amended. The plan must be submitted to the permitting authority for approval and must include, where applicable, provisions for:
1. mulching and re-vegetation of disturbed soil;
 2. temporary runoff control features such as ~~hay~~ straw bales, silt fencing, filter socks or diversion ditches;
 3. permanent stabilization structures such as retaining walls or riprap.
- E. To create the least potential for erosion, development must be designed to fit with the topography and soil of the site. Areas of steep slopes where high cuts and fills may be required are to be avoided wherever possible, and natural contours must be followed as closely as possible.
- F. Erosion and sedimentation control measures apply to all aspects of the proposed project involving land disturbance, and must be in operation during all stages of the activity. The amount of exposed soil at every phase of construction must be minimized to reduce the potential for erosion.
- G. Any exposed ground area must be temporarily or permanently stabilized in accordance with the "Maine Erosion ~~&and~~ Sediment Control ~~Best Management Practices (BMPs)~~ Field Guide for Contractors", ~~March 2003~~ 2015 and as amended.

113 H. Natural and man-made drainage ways and drainage outlets must be protected from erosion from water
114 flowing through them. Drainage ways must be designed and constructed in order to carry water from a
115 twenty five (25) year storm or greater, and be stabilized with vegetation or lined with riprap.

117
118
119 **16.2.2 Definitions.**

120 As used in this title:

121
122 **Contiguous lots** means lots which adjoin at any line or point, or are separated at any point by a body of
123 water less than fifteen (15) feet wide.

124
125 **Contractor, excavation** means a person engaged in the action or process of excavating, or creating a
126 cavity in the earth by means of cutting, digging or scooping. This excludes municipal, State and federal
127 employees conducting work associated with their employment; timber harvesters conducting timber
128 harvests; farmers conducting agriculture activities; or property owners performing work themselves.

129
130 **Convalescent care facility** means a facility that is licensed by the State of Maine to provide nursing care
131 to persons during periods of recovery or rehabilitation. The facility provides nursing care and related
132 rehabilitation services. The facility does not provide hospital services except as incidental to the delivery
133 of nursing care. A convalescent care facility does not include any facility that is defined as an eldercare
134 facility.

